IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

WP(C).No. 26102 of 2006(G)

PETITIONER:

V.S.PRAKASAN,
(LAB ASSISTANT, GRADE II S.N.M.COLLEGE,
MALIANKARA, UNDER ORDERS OF DISMISSAL FROM
SERVICE), RESIDING AT VELASSERIL, V.P.THURUTH,
KOTHAPURAM P.O., KODUNGALLOOR TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.K.P.RAJEEVAN
SMT.ACHA RANO MATHEWS.T.

RESPONDENTS:

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1. THE MANAGER,
S.N.M.COLLEGE, MALIANKARA,
MALIANKARA P.O., VIA MOOTHAKUNNAM,
ERNAKULAM DISTRICT.

2. THE EXECUTIVE COMMITTEE,
S.N.M.COLLEGE, MALLIANKARA,
MALIANKARA P.O., VIA MOOTHAKUNNAM,
ERNAKULAM DISTRICT.

3. VADEKKEKKARA HMDP SABHA,
MOOTHAKUNNAM P.O., ERNAKULAM DISTRICT.

4. MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY THE REGISTRAR,
M.G.UNIVERSITY CAMPUS, KOTTAYAM.

5. THE MAHATMA GANDHI UNIVERSITY
APPELLATE TRIBUNAL,
THIRUVANANTHAPURAM.

BY

GOVERNMENT PLEADER T.T. MUHAMMOOD
SRI. V.A. MUHAMMED, SC, M.G. UNIVERSITY
ADV. SRI.K.B.GANGESH
SRI.ANIL GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.26102/06

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE SHOW CAUSE NOTICE DT. 12.1.05.

EXT.P1(a). COPY OF THE PHOTOCOPY OF THE ENQUIRY REPORT.

EXT.P2. COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DT. 1.2.05.

EXT.P3. COPY OF JUDGMENT IN APPEAL NO.3/2005 (MG) DT. 15.6.06.

/TRUE COPY/

PA TO JUDGE.

A.K. BASHEER, J.

W.P.(C). NO. 26102 OF 2006

Dated this the 15th day of March, 2007

J U D G M E N T

Is the order of dismissal of the petitioner from service legally valid and sustainable?

2. The above question has come up for consideration in this writ petition in the following facts and circumstances.

3. While the petitioner was working as Lab Assistant Grade II in S.N.M. College, Maliankara, he was served with a memorandum of charges in August 2004. Six items of charges were levelled against the petitioner. The first charge was that on February 2, 2004, he had abused Mr. K.B. Shaji, another Lab Assistant in the Physics Department in foul language without any provocation and had also slapped him on his face. The second charge was that the petitioner had spread false allegation against a lecturer, namely Smt. M.G. Bhuvanerswari, working in the Chemistry Department that she demanded bribe from students for giving admission to various courses during the academic year 2004-05. The third charge was that on July 27, 2004, the petitioner compelled the office staff of the College to give

admission to one Anu Prasad to B.Sc. Physics. He had threatened the office staff using foul language when they expressed their inability to admit the said student. The fourth charge was that he had made derogatory statements in the college office against the management in front of the college staff on July 27, 2004. The fifth charge was that on July 27, 2004, at about 4.30 p.m. petitioner had abused the Principal of the College in foul language in the presence of the college staff at the college gate. The sixth and last charge was that the petitioner had forcefully entered into the room of the Principal of the College without permission and compelled the Principal to give admission to Sri. Anu Prasad mentioned above. He also threatened and compelled the management to give admission to the said student. Petitioner used foul language and threatened the Principal that he would face dire consequences if he refused to give admission to the said Anu Prasad.

4. It is not in dispute that the petitioner was given sufficient opportunity to defend himself in the domestic enquiry. The management had examined 7 witnesses as MW1 to MW7. Ext.M1 to M27 were also marked on the side of the management.

Petitioner got himself examined as CW1 and one of his witnesses was examined as CW2. Ext.C1 to C7 were marked on his side.

5. The Enquiry Officer held that all the charges levelled against the petitioner were "fully proved". A copy of report of the Enquiry Officer is on record as Ext.P1.

6. The disciplinary authority considered the said report and decided to impose a punishment of dismissal from service. It is also beyond controversy that the petitioner was afforded sufficient opportunity to show cause why the proposed punishment be not imposed on him. In response to the show cause notice, petitioner made a request to the management to furnish him the Malayalam translation of Ext.P1 report. Petitioner contends that the management did not accede to his request. Anyhow, it is the admitted position that petitioner was heard by the management pursuant to the show cause notice. Thereafter, the order of dismissal was passed by the management. A copy of the order is on record as Ext. P2.

7. The said order of dismissal was challenged by the petitioner before respondent No.5/ the Appellate Tribunal. The appellate authority considered the contentions raised by the

petitioner and the management and took a view that no interference was warranted in the order impugned before it. Accordingly, Ext.P3 order was passed by the Tribunal, which is challenged in this writ petition.

8. It is contended by the learned counsel for the petitioner that the order of dismissal, as confirmed by the appellate authority, is totally vitiated and illegal. Petitioner had specifically requested the management to furnish him a Malayalam translation of the report, which was submitted by the Officer in English. It is true that the petitioner was served with a copy of Ext.P1 report along with the show cause notice informing him that the management proposed to impose a punishment of dismissal from service. It is contended by the learned counsel that unless and until the petitioner was given a translated copy of the report, it could not have been said that rules of natural justice had been complied with. If the delinquent did not know how the charges levelled against him were dealt with and considered by the enquiry officer on the basis of the evidence let in by the parties, he could not have pointed out the flaws, if any, in the findings entered by the enquiry officer. The above

contention is not without force.

9. However Learned counsel for the management points out that a Malayalam translation copy of the report was in fact attempted to be furnished to the petitioner as revealed from Ext.P2 order of dismissal. It is pertinent to note that the petitioner does not have a case that he was not heard pursuant to the show cause notice. In that view of the matter petitioner cannot be heard to say that he did not get an opportunity to raise his objections with regard to the proposed punishment.

10. I have carefully perused the report and the order of the appellate authority. I am satisfied that the petitioner had been afforded sufficient opportunity to defend himself. He had got himself examined as CW1. He had also examined a witness on his side apart from producing several documents in support of his case. Therefore, I am satisfied that rules of natural justice have been satisfactorily complied with.

11. What remains is only the question of proportionality of sentence imposed on the petitioner. It is not in dispute that the petitioner had served the institution for more than 20 years. His service record appears to be comparatively satisfactory

except for one instance when his increment was barred without cumulative effect. That was a long time ago. It is brought to my notice that under normal circumstances petitioner would have superannuated in the month of March 2007.

12. Having carefully perused the items of charge and also the finding entered by the enquiry officer on the basis of evidence available on record, I am satisfied that the sentence imposed on the petitioner is a little too harsh. It is true that any management has to ensure that discipline in the institution is maintained. No erring employee should be left scot free especially, when in a properly conducted domestic enquiry the delinquent had been found guilty. But still, the sentence imposed on a delinquent should be tempered with mercy and humaneness. In the instant case petitioner had served the institution for well over two decades. His track record had not been that bad. Learned counsel for the management fairly submits that in hindsight the management may not be averse to imposing a less heavy punishment on the petitioner. It is further submitted by the learned counsel that the anxiety of the management was only to ensure that a clear signal be given to

the employees of the institution that discipline is paramount.

Having regard to the totality of circumstances, I am satisfied that interference is warranted with regard to the quantum of punishment imposed on the petitioner. Therefore, in lieu of the order of dismissal, petitioner is imposed a punishment of compulsorily retirement from service. The writ petition is allowed and Exts. P2 and P3 are modified to the above extent. Management shall issue appropriate consequential orders with regard to the retiral benefits of the petitioner forthwith.

A.K. BASHEER, JUDGE

vps

KURIAN JOSEPH, JUDGE

OP NO.

JUDGMENT

21st DECEMBER, 2006